



4910-13

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA-2020-0862]

COVID-19 Related Relief Concerning Operations at Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, New York LaGuardia Airport, Ronald Reagan Washington National Airport, and San Francisco International Airport for the Winter 2022/2023 Scheduling Season

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Expiration of the limited, conditional waiver of the minimum slot usage requirements.

SUMMARY: The FAA's current COVID-19 related relief policy for U.S. slot-controlled and Level 2 airports will expire on October 29, 2022. This notice confirms resumption of the minimum slot usage requirements for Operating Authorizations (slots) at Ronald Reagan Washington National Airport (DCA), John F. Kennedy International Airport (JFK) and LaGuardia Airport (LGA) for the Winter 2022/2023 scheduling season beginning October 30, 2022. This notice announces a similar resumption of standard FAA processes at designated International Air Transport Association (IATA) Level 2 airports in the United States (U.S.) to provide priority consideration for runway timings that are scheduled and operated as approved for purposes of establishing a carrier's operational baseline in the next corresponding season. These IATA Level 2 airports include Chicago O'Hare International Airport (ORD), Los Angeles International Airport (LAX), Newark Liberty International Airport (EWR), and San Francisco International Airport (SFO). The FAA recognizes the importance of reciprocity in connection with usage alleviation policies with regard to COVID-19-related capacity and frequency

restrictions at foreign airports and will consider justified requests by U.S. and foreign air carriers for usage waivers based on reciprocity and other related circumstances.

DATES: This action is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Al Meilus, Slot Administration and Capacity Analysis, AJR-G5, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number 202-267-2822; email al.meilus@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

On March 16, 2020, the FAA granted a limited waiver of the minimum slot usage requirements¹ to carriers operating at all slot-controlled airports in the United States (DCA, JFK, and LGA)² and related relief to carriers operating at designated IATA Level 2 airports in the United States (EWR, LAX, ORD, SFO) due to the extraordinary impacts on the demand for air travel resulting from the effects of the COVID-19 pandemic.³ Since the initial slot usage waiver and related relief was provided, the FAA has taken action to extend relief on five occasions, subject to certain substantive changes, such as narrowing the scope of relief and adding conditions, as the effects of the COVID-19 pandemic

¹ The FAA has authority for developing “plans and policy for the use of the navigable airspace” and for assigning “by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace.” 49 U.S.C. 40103(b)(1). The FAA manages slot usage requirements under the authority of 14 CFR 93.227 at DCA and under the authority of Orders at JFK and LGA. *See* Operating Limitations at John F. Kennedy International Airport, 85 FR 58258 (Sep. 18, 2020); Operating Limitations at New York LaGuardia Airport, 85 FR 58255 (Sep. 18, 2020).

² Although DCA and LGA are not designated as IATA Level 3 slot-controlled airports given that these airports primarily serve domestic destinations, the FAA limits operations at these airports via rules at DCA and an Order at LGA that are equivalent to IATA Level 3. *See* FN 1. The FAA reiterates that the relief provided in the March 16, 2020, notice (85 FR 15018); the April 17, 2020, notice (85 FR 21500); the October 7, 2020, notice (85 FR 63335); the January 14, 2021, Summer 2021 FAA Policy Statement (Docket No. FAA-2020-0862-0302); and, the October 20, 2021, notice (86 FR 58134), extends to all allocated slots, including slots allocated by exemption.

³ Orders Limiting Operations at John F. Kennedy International Airport and New York LaGuardia Airport; High Density Traffic Airports Rule at Ronald Reagan Washington National Airport, 85 FR 15018 (Mar. 16, 2020).

evolved.⁴ The most recent limited, conditional extension of COVID-19-related relief was issued by the FAA on March 29, 2022, and expires on October 29, 2022.⁵

Standard Applicable to This Waiver Proceeding

The FAA reiterates the standards applicable to petitions for waivers of the minimum slot usage requirements in effect at DCA, JFK, and LGA, as discussed in FAA's initial decision granting relief due to COVID-19 impacts.⁶ At JFK and LGA, each slot must be used at least 80 percent of the time.⁷ Slots not meeting the minimum usage requirements will be withdrawn. The FAA may waive the 80 percent usage requirement in the event of a highly unusual and unpredictable condition that is beyond the control of the slot-holding air carrier and which affects carrier operations for a period of five consecutive days or more.⁸

⁴ Orders Limiting Operations at John F. Kennedy International Airport and New York LaGuardia Airport; High Density Traffic Airports Rule at Ronald Reagan Washington National Airport, 85 FR 21500 (Apr. 17, 2020); COVID-19 Related Relief Concerning Operations at Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, New York LaGuardia Airport, Ronald Reagan Washington National Airport, and San Francisco International Airport for the Winter 2020/2021 Scheduling Season, 85 FR 63335 (Oct. 7, 2020); FAA Policy Statement: Limited, Conditional Extension of COVID-19 Related Relief for the Summer 2021 Scheduling Season (Docket No. FAA-2020-0862-0302); COVID-19 Related Relief Concerning Operations at Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, New York LaGuardia Airport, Ronald Reagan Washington National Airport, and San Francisco International Airport for the Winter 2021/2022 Scheduling Season, 86 FR 58134 (Oct. 20, 2021); and COVID-19 Related Relief Concerning Operations at Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, New York LaGuardia Airport, Ronald Reagan Washington National Airport, and San Francisco International Airport for the Summer 2022 Scheduling Season, 87 FR 18057 (Mar. 29, 2022).

⁵ COVID-19 Related Relief Concerning Operations at Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, New York LaGuardia Airport, Ronald Reagan Washington National Airport, and San Francisco International Airport for the Summer 2022 Scheduling Season, 87 FR 18057 (Mar. 29, 2022).

⁶ See Orders Limiting Operations at John F. Kennedy International Airport and New York LaGuardia Airport; High Density Traffic Airports Rule at Ronald Reagan Washington National Airport, 85 FR 15018 (Mar. 16, 2020).

⁷ Operating Limitations at John F. Kennedy International Airport, 85 FR 58258 at 58260 (Sep. 18, 2020); Operating Limitations at New York LaGuardia Airport, 85 FR 58255 at 58257 (Sep. 18, 2020).

⁸ At JFK, historical rights to operating authorizations and withdrawal of those rights due to insufficient usage will be determined on a seasonal basis and in accordance with the schedule approved by the FAA prior to the commencement of the applicable season. See JFK Order, 85 FR at 58260. At LGA, any operating authorization not used at least 80 percent of the time over a two-month period will be withdrawn by the FAA. See LGA Order, 85 FR at 58257.

At DCA, any slot not used at least 80 percent of the time over a two-month period also will be recalled by the FAA.⁹ The FAA may waive this minimum usage requirement in the event of a highly unusual and unpredictable condition that is beyond the control of the slot-holding carrier and which exists for a period of nine or more days.¹⁰

When making decisions concerning historical rights to allocated slots, including whether to grant a waiver of the usage requirement, the FAA seeks to ensure the efficient use of valuable aviation infrastructure while maximizing the benefits to airport users and the traveling public. This minimum usage requirement is expected to accommodate routine cancellations under all but the most unusual circumstances. Carriers proceed at risk if, at any time prior to a final decision, they make decisions in anticipation of the FAA granting a slot usage waiver.

Summary of Petitions Submitted

Airlines for America (A4A) and the IATA, on behalf of their member airlines, filed a petition with the FAA on August 25, 2022, to extend the FAA’s current waiver policy for international operations through the Winter 2022/2023 scheduling season from October 30, 2022, through March 25, 2023. A4A and IATA indicate the industry faces “considerable challenges as it attempts to ramp up operations to meet pre-COVID level air travel demands. Shortfalls in resourcing and staffing at airports, security and immigration, air traffic control and at some airlines are well documented across the globe.” A4A and IATA cite “a number of major airports declaring lower levels of capacity, which has a negative impact on individual airline’s ability to restore historic operations.” In addition, A4A and IATA state that “the COVID-19 pandemic continues to impact airline, air traffic control and airport operations, especially at the international level.” In support of this claim, A4A and IATA provide that “infection rates have been

⁹ See 14 CFR 93.227(a).

¹⁰ See 14 CFR 93.227(j).

increasing globally as variants cycle through phases of dominance and some countries continue to maintain COVID-19 policies impacting aviation, particularly in the Asia-Pacific and Middle East-Africa regions. United States-Asia traffic remains down 65% in some key Asian markets and down 90% from Hong Kong and China compared to 2019 levels.” Further, A4A and IATA note the aviation impacts resulting from the Russian invasion of Ukraine, inflation and economic downturn, and concerns about some airports’ ability to provide sufficient capacity and resources to support a return to 80% slot use rate. Finally, A4A and IATA express concern that without continued relief “U.S. carriers will not be granted reciprocal relief from other leading countries and non-U.S. carriers are prevented from a sustainable recovery of their U.S. network.”

Analysis

Waivers are reserved for highly unusual and unpredictable conditions beyond the control of carriers. The concerns identified in the petitions, such as general economic conditions, reduced demand, operating costs, inability to recruit or retain staff or similar factors are not highly unusual and unpredictable conditions that justify broad proactive relief from minimum slot usage rules. Access to slot-controlled airports is limited; slots are scarce resources and use of those scarce resources should be prioritized by the slot holder. It is the policy of the Department of Transportation (DOT) to encourage high utilization of scarce public infrastructure. Further, it is not the policy of DOT to use slot and Level 2 rules to reserve capacity for historic incumbent carriers until demand returns to predetermined levels. The FAA has extended COVID-19 related relief five times since first providing relief in March of 2020. As FAA and DOT have previously stated, at some point in time, continuing waivers to preserve pre-COVID slot holdings may impede the ability of airports and airlines to provide services that benefit the overall national economy and make appropriate use of scarce public assets.¹¹ Initial COVID-19 related

¹¹ See 85 FR 63345

relief was provided for all operations at the slot controlled and Level 2 airports and has been scaled back as improvements to the public health emergency supported increased demand in domestic markets and a resumption of international demand in most markets. To date, based on carrier scheduling data some carriers have even started new services and entered new markets not served previously to meet demand for travel during the initial recovery phases.

In addition, COVID-19 travel restrictions in the United States and many other countries have decreased significantly over the course of the Summer 2022 scheduling season; however, the FAA acknowledges that demand in some international markets is constrained due to continuing COVID-19 related restrictions that impact international operations in certain countries or regions. These COVID-19 related restrictions may include flight frequency or flight capacity limitations, crew treatment protocols that do not allow crews to safely rest in certain jurisdictions, and other restrictions that impede the ability of carriers to operate flights that they would otherwise intend to operate. These remaining COVID-19 related restrictions in certain foreign jurisdictions for which usage relief might be appropriate, do not, however, support a broad waiver of the minimum slot usage rules for all international operations or for carriers that may not operate for other reasons.

Therefore, the FAA denies the petition by A4A and IATA for an extension of the Summer 2022 alleviation policies to the Winter 2022/2023 scheduling season as the requested relief is overly broad and justified relief for slot holders can be addressed through other more narrowly tailored means. The FAA slot usage waiver standards are sufficient to provide targeted relief for U.S. or foreign air carriers that are affected by the remaining COVID-19-related restrictions imposed in foreign jurisdictions. The FAA recognizes that relief may be appropriate in consideration of reciprocal treatment of air carriers and foreign air carriers with various alleviation policies at foreign airports related

to restrictions and recovery from COVID-19 impacts. The FAA intends to work closely with the Office of the Secretary of Transportation (OST) in reviewing requests for relief based on foreign government restrictions or reciprocity. To the extent that U.S. carriers operate to jurisdictions that do not offer reciprocal relief to U. S. carriers, the FAA may determine not to grant a waiver to carriers of that jurisdiction.

The aviation industry is not unique in its challenges as other industries also face issues with employee resources, illnesses, and onboarding and training as we emerge from the pandemic's effects. The air transportation industry, however, has a unique role that supports the movement of passengers and cargo. Carriers need to recognize the operating environment, constraints, and opportunities and plan operations and slot use accordingly. The FAA recognizes the significant impact slot usage waiver policies have on airports, consumers, and aviation industry partners; the FAA and OST are acutely interested in seeing the return to full utilization of valuable and limited public resources in the Winter 2022/2023 scheduling season.

The FAA reminds operators that the slot rules treat slots as being used for several of the days around certain holiday periods in the U.S. Specifically, in the Winter 2022/2023 scheduling season, this includes Thanksgiving Day and the day after (November 24 and 25, 2022) and from Saturday, December 24, 2022, through January 7, 2023. These periods effectively are automatically waived and treated as operated for usage purposes and may assist carriers in planning schedules and usage rates.

Decision

The FAA's current, limited COVID-19 related relief policies for international flights at the slot-controlled and Level 2 airports during the Summer 2022 scheduling season will expire as planned on October 29, 2022.¹² The FAA will rely on existing

¹² COVID-19 Related Relief Concerning Operations at Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, New York LaGuardia Airport, Ronald Reagan Washington National Airport, and San Francisco International Airport for the Summer 2022 Scheduling Season, 87 FR 18057, (Mar. 29, 2022).

standards¹³ to determine whether relief from usage rules and procedures is warranted on an individual carrier basis.

The FAA anticipates there will be a limited number of carrier requests for relief in Winter 2022/2023 based on foreign government-imposed travel restrictions or highly restrictive temporary limitations on flights. The FAA will work closely with OST on any such requests to determine appropriate action based on the circumstances and factors such as reciprocal treatment for U.S. carriers.

Carriers requesting relief from minimum usage requirements or similar relief for runway timings at the FAA-designated Level 2 airports should submit a petition to the FAA Slot Administration Office at 7-awa-slotadmin@faa.gov.

Issued in Washington, DC, on October 26, 2022.

Alyce Hood-Fleming,
Acting Vice President, System Operations Services.

Marc A. Nichols,
Chief Counsel.
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¹³ Operating Limitations at John F. Kennedy International Airport, 85 FR 58258 at 58260 (Sep. 18, 2020); Operating Limitations at New York LaGuardia Airport, 85 FR 58255 at 58257 (Sep. 18, 2020); 14 CFR 93.227(j).